

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No.1403 of 2003

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22nd August 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.07.2003 in W.P.No.44 of 1999 on the file of the High Court)

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Between:

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N. Ananthaiah, S/o N. Gangaiah.

.. Appellant.

And
Besant Theosophical College,
Madanapalle – 517 325, Chittoor District,
rep. by its Correspondent and two others.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

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JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

The appellant herein, who is the un-successful writ petitioner, filed this appeal assailing the order dated 23.07.2003 in W.P.No.44 of 1999 of the learned Single Judge dismissing the Writ Petition seeking for mandamus to declare the action of the first respondent in filling up of the solitary post of Librarian/Lecturer in Library Science by the method of direct recruitment by applying the rule of reservation as being in contravention of G.O. Ms.No.127, dated 07.06.1993 and Rule 22(A) (j) of A.P. State and Subordinate Service Rules and issue a consequential direction to the respondents to consider the case of the petitioner for promotion to the post of Librarian/Lecturer in Library Science in the college of the first respondent.

Few facts, which are necessary for disposal of this appeal, are that the appellant was initially appointed as a Record Assistant with

the first respondent on 20.12.1982 and later he passed M.A. in Political Science in Second Class from S.V. University and also acquired B.Ed. in Second Class in the year 1985. In the year 1994, the appellant passed M.L.I.Sc. in second class and also passed post graduation in second class in Library and Information Science with 55% marks in the year 1996 and later he was promoted as Assistant Librarian and was placed in-charge of P.G. Library from 1988 to 1990. The Government issued orders in G.O.Ms.No.127, Education (CE.I) Department, dated 07.06.1993 contemplating procedure for selection to the posts of Principals, Physical Directors, Librarians, Readers etc., in private Degree Colleges in the State which is reiterated in para 7 of the G.O. that the posts of Librarians in Degree Colleges shall be filled by recruitment by transfer from among the qualified, eligible and suitable Assistant Librarians of the Junior Colleges under the same management provided they possess the qualifications prescribed by the UGC and in the absence of such Librarians, by Direct Recruitment. In spite of such Rule, it was complained by the appellant in the Writ Petition that the first respondent issued a notification on 15.05.1998 for filling up of various posts including that of Librarian. Once again, a fresh notification was issued on 14.06.1998 for all such posts including the Librarian inviting applications for direct recruitment, showing the said post of Librarian as reserved for BC-B candidate. It

is to be noticed that only one post of Librarian is with the first respondent. It was pointed out that the Board of Intermediate Education issued instructions to all the private Degree and Junior Colleges vide proceedings Rc.No.11364/E1-2/94 wherein it was stated that when there is only a single and solitary post borne on the category like Principals, Physical Directors or Librarian, the rule of special reservation will not apply for such posts and these posts should not be reserved for SC, ST, BC or Physically Handicapped candidates. Similarly, the State Government also issued a notification in G.O.Ms.No.65, General Administration (Service-D) Department, dated 15.02.1997 amending Rule 22 of the A.P. State and Subordinate Service Rules to the effect that no special reservation shall apply where there is only a single solitary post in the category of service. On 11.01.1999 and 12.01.1999, the first respondent issued interview letters to various applicants to be present on the said day. However, the appellant submitted a representation on 01.01.1999 requesting the first respondent to consider his case for the said post of Librarian. Since the respondents did not accede to his request, he filed the present Writ Petition, *inter alia*, assailing the very process of appointment as initiated by direct recruitment in the aforesaid notification as being invalid and also to consider his case for the said

post.

After contest by the respondents herein, the learned Single Judge accepted the first prayer and set aside the said notification holding that where there is only a single solitary post of Principal, Physical Director or Librarian, the rule of special reservation does not arise, as evident from the aforesaid notifications and the amended rule. Since it has been held that the appellant is not qualified whereas the third respondent is qualified, the present appeal has been filed. It was also held by the learned Single Judge that reserving the solitary post to BC-B category is illegal. However, once again falling back in the case of the third respondent, it was held that since she belongs to BC-B and the same is not being reserved, she is qualified and it is this later portion which the appellant aggrieved and filed this appeal.

Having heard Sri D.V.Sitharam Murthy, learned counsel appearing for the appellant, Sri S.V.Bhatt, learned counsel appearing for the first respondent, learned Government Pleader appearing for the second respondent and Sri Nuty Ram Mohan Rao, learned counsel appearing for the third respondent, the point which now narrows down for consideration is as to whether the appellant is qualified or not including the eligibility of the third respondent ?

Now, the main prayer is acceded to by the learned Single Judge in quashing the very notifications issued by the first respondent on

15.05.1998 and 14.06.1998 on the ground that since it being a solitary post, the rule of reservation does not arise and hence it is not necessary to go into either of the aspects.

Coming back to the fact that the said post is a solitary one and the appellant is already working as an Assistant Librarian having been promoted in the year 1996 itself on acquisition of Post Graduation Degree in Library and Information Science with 55% marks. There is no serious dispute to the fact that as per G.O.Ms.No. 491, dated 16.11.1984, the minimum qualification for future recruitment to the post of Librarian shall be as determined by the UGC whereas the UGC in its circular dated 20.02.1990 prescribed qualification for the post of Assistant University Librarian/College Librarian as Master's degree in Library Science/Information Science/Documentation or an equivalent professional degree with at least 55% marks or equivalent grade plus consistently good academic record or the Master's degree in Arts/Science/Commerce. Further, under the G.O.Ms.No.208, the State Government adopted the UGC guidelines and fixed qualification for the post of Librarian. Therefore, there is no requirement to have 55% at Post Graduation level and thus, it would suffice if the candidate has 55 % in M.L.I.Sc. There is no serious dispute to the submission made on behalf of the appellant that the qualifications to said post as

contemplated under G.O.Ms.No.208, were also followed in certain other posts of Librarian in Aided Degree Colleges. Thus, from the above, it cannot be said that the appellant no-where come nearer to satisfy the required qualifications for such posts. The learned Single Judge only sought to proceed on the ground that the appellant does not possess Master's Degree and has not passed with high second class. The said approach of the learned Single Judge apparently runs contrary not only to the actual qualifications as held by the appellant and also the aforesaid guidelines of the UGC which has been adopted by the State Government. Though, it has been left open for the first respondent to take steps to fill up the posts in accordance with the rules and having regard to the observations made against the appellant and in favour of the third respondent, the present controversy has given scope for the present controversy. Since the very notification itself has been now quashed and there being no such appeal or challenge by the first respondent herein or the other authorities against the said finding, it has become final, conclusive and binding. Now the only question is to fall back on the very procedure as pointed out above to look for the candidates from within rather than once again going for any fresh notification. Either way, there is no necessity of going for any direct recruitment as such especially in view

of the fact that the appellant is fully qualified which cannot be disputed having regard to the satisfaction of the requirements as contemplated under the aforesaid guidelines as adopted by the State Government. Therefore, we hold that the appellant being an inside candidate who is eligible to be considered for such promotion, the question of going for any fresh steps as such does not arise. It may not be out of place to make a mention that the third respondent herein admittedly is an outsider and though she belongs to BC-B group, she does not appear to be fulfilling the conditions required under the G.O.Ms.No.328 apart from the fact that her appointment being a temporary, no right as such would be conferred on her.

The Writ Appeal is allowed. The order to the extent that the appellant is not qualified and the third respondent is qualified and giving directions to the first respondent to take steps afresh to fill up the posts is set aside. The first respondent is directed to consider the case of the appellant for the promotion to the post of Librarian in terms of the observations made above. No costs.

B. PRAKASH RAO, J

D. APPA RAO, J

22nd August 2006.

Chvn.

